

**Amendment No. 1 to HB0712**

**Buck  
Signature of Sponsor**

**AMEND Senate Bill No. 296\***

**House Bill No. 712**

**FILED**

Date \_\_\_\_\_

Time \_\_\_\_\_

Clerk \_\_\_\_\_

Comm. Amdt. \_\_\_\_\_

By deleting all language after the enacting clause and substituting instead the following:

SECTION 1. Tennessee Code Annotated, Section 40-18-110, is amended by deleting the section in its entirety and by substituting instead the following:

(a) When requested by a party in writing and prior to the jury charge in a criminal case, the trial judge shall charge the jury as to the law of each offense specifically identified in the request that is a lesser included offense of the offense charged in the indictment or presentment. However, the trial judge shall not charge the jury as to any such offense unless there is evidence that reasonable minds could accept to find every element of the lesser included offense when the evidence is viewed in the light most favorable to the existence of such offense. In the absence of a written request from a party specifically identifying the particular lesser included offense or offenses on which a jury charge is sought, a trial judge shall not charge the jury on any lesser included offense or offenses, and no party shall be entitled to any such charge. Notwithstanding any other provision of law to the contrary, when a defendant fails to request the charge of a specific lesser included offense as required by this subsection, such charge is waived. The failure of the trial judge to instruct the jury on any such offense may not be presented as a ground for relief either in a motion for a new trial or on appeal.

(b) An offense is a lesser included offense if all of the statutory elements of the offense are included within the statutory elements of the offense charged in the indictment or presentment. For the purpose of lesser included offense analysis:

(1) The culpable mental states of knowing, reckless and criminally negligent are included in the mental state of intentional.

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(2) The culpable mental states of reckless and criminally negligent are included in the mental state of knowing.

(3) The culpable mental state of criminally negligent is included in the mental state of reckless.

(c) The offense of criminal attempt as defined in Tennessee Code Annotated, Section 39-12-101, is a lesser included offense of the offense charged in the indictment or presentment if the charged offense has not been completed and if there is evidence that reasonable minds could accept to find every element of the offense of criminal attempt when the evidence is viewed in the light most favorable to the existence of that offense. The offense of criminal responsibility for facilitation of a felony, as defined in Tennessee Code Annotated Section 39-11-403, is not a lesser included offense to any offense charged in the indictment or presentment.

(d) Notwithstanding any other provision of law to the contrary, failure of the defendant, either personally or through an attorney, to object to the erroneous inclusion of a lesser included offense in the charge constitutes consent by the defendant to an amendment to the indictment or presentment under Tennessee Rules of Criminal Procedure 7(b), and the defendant may be convicted of such offense as if it had been charged specifically in the indictment or presentment.

SECTION 2. This act shall take effect on July 1, 2001, the public welfare requiring it, and shall govern all trials conducted on or after that date.